IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-461

STEVE MODLA, Petitioner,

vs.

SOUTHSIDE HOSPITAL and SCOTTY PARKER,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF ARIZONA

PETITIONER'S REPLY MEMORANDUM

Steve Modla
1060 South Mesa Drive
Mesa, Arizona 85202
In Propria Persona

JURISDICTION

I. TIMELINESS OF PETITION

Respondents contend that this applicant's Petition for Certiorari was not filed timely. It should be noted that this petitioner placed a telephone call to the Clerk of the United States Supreme Court on September 18, 1972, requesting information as to the procedure for obtaining an extension for the filing of a petition in this matter. Petitioner was informed by the Clerk that if a telegram was sent from Arizona by the petitioner so that it would arrive in Washington D.C. before midnight on the 18th day of September, 1972, that when the petition arrived it would be considered timely. Pursuant

to the instructions of the Clerk of the Court, petitioner placed a telegram with Western Union Telegraph Company at 12:25 P.M. Phoenix time. Western Union's records show that such telegram was sent from Phoenix over the wires at 12:39 P.M., 14 minutes after the message was received from Mr. Modla.

Due to some mechanical mistake on the part of Western Union, the telegram arrived 8 1/2 hours later or at 11:57 P.M. in Washington, D.C. The telegram had specific instructions that it was to be delivered to the Supreme Court immediately. However, it was not delivered until 8:40 A.M. on the morning of September 19, 1972. It should be noted that the petition which was mailed

September 18, 1972 was received by the Supreme Court and docketed as of September 19, 1972. The request for the extension of time and the pertinent facts have been set forth in a petition to Justice William O. Douglas. As of the time of the filing of this Reply Memorandum, Justice Douglas has not ruled on the matter of the petitioner's request for an extension of time.

Petitioner submits that he followed the instructions of the Clerk of the United States Supreme Court explicitly when he placed a telegram with Western Union Telegraph Company. Only due to mechanical difficulties of Western Union did the telegram not arrive

on time. Therefore, petitioner prays that since he complied with all of the rules in reference to obtaining an extension of time, that his Petition for Certiorari be accepted as timely.

II. FEDERAL QUESTIONS RAISED BELOW

Petitioner has raised many times the federal questions involved in this matter in the Superior Court hearings, the Court of Appeals and the Supreme Court of the State of Arizona. The federal questions were raised as to the lack of counsel and the denial of the motion for continuance of hearing.

"Without being represented by counsel is in itself a flagrant denial of due

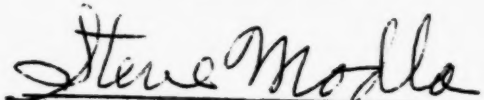
process of law. I am at this moment desperately seeking an attorney of standing." [AR, pg. 146]

"The short period allocated to me by the Court to prepare my brief for summary judgment against the defendants in my sickness is quite impossible to properly prepare." [AR, pg. 144]

Even if the federal issues had not been raised in this case, the denials of counsel and of the motion for continuance were such flagrant violations of due process that the Court should act "sua sponte". The importance of counsel has already been made apparent in the petitioner's

original Petition for Certiorari. The Court, realizing such issues, should not base its decision in this matter on the fact that the lower courts have failed to rule on these issues. The petitioner herein is entitled to the federal due process of law which has been denied him by the courts below.

Respectfully submitted,



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Two copies of the foregoing
mailed this 30 day of
November, 1972, to:

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Kathy Cipperly